

LFC Requester:**Theresa Rodgers/Aurora
Sanchez****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:***Original** ☒ **Amendment** ☐
Correction ☐ **Substitute** ☐**Date** January 7, 2016**Bill No:** HB 35**Sponsor:** William "Bill" R. Rehm
Short Habitual Offender Sentencing
Title: Changes**Agency Code:** 305**Person Writing** Zach Jones**Phone:** 505-252-4950 **Email** zjones@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
X	X	X	X
X	X	X	X

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
X	X	X	X	X
X	X	X	X	X

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	X	X	X	X	X	X

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

NMSA 1978, Section 31-18-17 (2002) provides for discretionary sentencing enhancements based on a criminal defendant's number of prior felony convictions. One prior conviction over the last ten years means a one-year enhancement per eligible felony count; two convictions means four years per count; three means eight. House Bill 35 ("HB 35") proposes two changes to Section 31-18-17. Both changes would make Section 31-18-17 more efficient for the prosecution.

The first proposal eliminates a judge's discretion to suspend or defer a one-year enhancement filed by the State. Currently, a judge can suspend or defer a one-year enhancement (but not a four- or eight-year enhancement) if both the prior and instant conviction are nonviolent, and the judge makes specific findings for not imposing the enhancement. This change eliminates a judge's discretion to suspend or defer any habitual-offender enhancement the State files. If the State decides to file an enhancement, a court must impose it.

The second proposal is more significant. At present, a prior felony conviction is one in which less than ten years have passed between the end of the sentence for that conviction and the date of the new conviction. Older felony convictions falling outside this ten-year window cannot be used to enhance. This alteration proposes to eliminate this time limitation such that any prior felony conviction, regardless of date of conviction, could be used for enhancement.

These two large changes would mark a return to Section 31-18-17 as it existed prior to 2002, when the imposition of an enhancement was mandatory in all cases in which there was a prior felony conviction, regardless of the date of the conviction. See State v. Shay, 2004-NMCA-077, ¶¶ 1, 2, 94 P.3d 8.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

HB 35 does not present any obvious legal issues, since it is a return to the law as written in 2002. Elimination of a judge's discretion to suspend or defer a one-year enhancement is noteworthy, but pales in comparison to elimination of the ten-year window. If the latter proposal becomes law, all repeat offenders risk having their sentences enhanced. The two defendants in Shay, for instance, saw their sentences enhanced by felony convictions that would not be useable now (five out of the six priors were over ten years old, the oldest being 21 years old). Shay ¶¶ 3-4.

HB 35 represents a tool for prosecutors statewide to incarcerate repeat offenders to protect the community and does not allow judges to suspend or defer a one-year enhancement.

As current practice allows judges permit incarceration for a one-year enhancement to be served in a county jail, an amendment to HB 35 could add language to prevent this as follows:

- A. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender and ~~[his]~~ the habitual offender's basic sentence shall be increased by one year. The sentence imposed pursuant to this subsection shall not be suspended or deferred ~~[unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this subsection].~~ A sentence imposed pursuant to this subsection shall be served in a facility designated by the Department of Corrections; no portion of this sentence shall be served in a county jail.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 37, Three Strikes Law (also Rehm).

Relates to HB 56, Three Strikes Law (Pacheco).

Relates to HB 82, Habitual-Offender Sentencing and DWIs.

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo; the habitual-offender statute will exist in its current form.

AMENDMENTS